

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 09-23-04.

The IRO reviewed manual therapy, stimulation, re-education, exercises and office visits rendered from 08-20-03 through 02-13-04 that were denied based upon "U".

The IRO determined that the electrical stimulation and office visit on 08-20-03 and a maximum of three (3) units of therapeutic exercises from 08-20-03 through 09-17-03 **were** medically necessary. The IRO determined that all remaining services and procedures in dispute **were not** medically necessary.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the **majority** of issues of medical necessity. Consequently, the requestor is not owed a refund of the paid IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was not the only issue** to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 11-08-04, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14-days of the requestor's receipt of the Notice.

CPT code 97110 date of service 08-22-03 denied with denial code "F" (fee guideline MAR reduction). The carrier has made no payment. Recent review of disputes involving CPT Code 97110 by the Medical Dispute Resolution section indicate overall deficiencies in the adequacy of the documentation of this Code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes "one-on-one." Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Medical Review Division has reviewed the

matters in light all of the Commission requirements for proper documentation. Reimbursement not recommended.

CPT code 97112 date of service 08-26-03 denied with denial code "F" (fee guideline MAR reduction). The carrier has made no payment. Reimbursement is recommended per the Medicare Fee Schedule in the amount of \$36.94 (\$29.55 X 125%).

CPT code 99080-73 dates of service 08-29-03, 09-12-03, 10-13-03, 11-21-03 and 12-19-03 denied with denial code "F" (fee guideline MAR reduction). The carrier has made no payment. Reimbursement is recommended per Rule 133.3069f)(1) in the amount of \$75.00 (\$15.00 X 5 DOS).

ORDER

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with Medicare program reimbursement methodologies effective August 1, 2003 per Commission Rule 134.202(c), plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Decision is applicable for dates of service 08-20-03 through 12-19-03 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Findings and Decision and Order are hereby issued this 21st day of January 2005.

Debra L. Hewitt
Medical Dispute Resolution Officer
Medical Review Division

DLH/dlh
Enclosure: IRO Decision

November 4, 2004
January 18, 2005

Rosalinda Lopez
Texas Workers' Compensation Commission
Medical Dispute Resolution
Fax: (512) 804-4868

REVISED REPORT
Corrected items in dispute.

Re: Medical Dispute Resolution
MDR #: M5-05-0331-01
TWCC#:
Injured Employee:
DOI:
SS#:
IRO Certificate No.: IRO 5055

Dear Ms. Lopez:

IRI has performed an independent review of the medical records of the above-named case to determine medical necessity. In performing this review, IRI reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

I am the Secretary and General Counsel of Independent Review, Inc. and I certify that the reviewing healthcare professional in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this case for determination prior to referral to the Independent Review Organization.

Information and medical records pertinent to this medical dispute were requested from the Requestor and every named provider of care, as well as from the Respondent. The independent review was performed by a matched peer with the treating health care provider. This case was reviewed by a physician who is certified in chiropractic and is currently on the TWCC Approved Doctor List.

REVIEWER'S REPORT

Information Provided for Review:

TWCC-60, Table of Disputed Services, EOB's

Information provided by Requestor:

- Letter of medical necessity 08/20/04
- Office notes 07/31/03 – 02/13/04
- Work hardening notes 11/10/03 – 11/28/03
- Physical therapy notes 08/01/03 – 11/17/03
- Group counseling notes 11/11/03 – 11/25/03
- FCE ____
- Operative report ____
- Radiology reports ____ – 09/02/03

Information provided by Respondent:

- Designated doctor consultation 06/11/04

Information provided by pain management specialist:

- Office note 08/29/03
- Nerve conduction study 08/29/03

Information provided by orthopedic surgeon
- Office note 10/02/03

Clinical History:

The patient is a 28-year-old male who sustained an injury to his face, and his cervical and lumbar spines on _____. He initially underwent operative repair on his nose that same day, and then commenced treatment with a doctor of chiropractic, that included physical therapy and rehabilitation. He was eventually referred to a 5-week work hardening program, was deemed at MMI by his treating doctor on 01/09/04 with a 10% whole-person impairment, and was released to full-duty work on 01/12/04. On 06/11/04, he was seen by a TWCC designated doctor for an impairment rating who found him to be at MMI effective on that same date, but with only a 5% whole-person impairment.

Disputed Services:

Manual therapy, stimulation, re-education, exercises and office visits during the period of 08/20/03 thru 02/13/04.

Decision:

The reviewer partially disagrees with the determination of the insurance carrier and is of the opinion that electrical stimulation (97032) and office visit (99212) on 08/20/03, and up to a maximum of three (3) units of therapeutic exercises (97110) per encounter from 08/20/03 thru 09/17/03, were medically necessary in this case. All remaining services and procedures in dispute were not medically necessary.

Rationale:

In this case, the documentation adequately substantiated that a compensable injury had occurred, so the application of modalities at approximately four weeks post-injury was reasonable. In addition, it would have been appropriate to monitor the patient's progress during the treatment plan, so a lower level evaluation and management (E/M) service reported at that time was also appropriate.

However, the diagnoses in this did not support the medical necessity that an expanded problem-focused E/M service be performed on each routine patient encounter, and particularly not in the middle of a predetermined treatment plan. Therefore, the 99213 E/M services were denied.

The documentation demonstrated that a re-evaluation had already been performed on this patient on 11/07/03; therefore, the medical necessity of performing another re-evaluation on 11/21/03 – only two weeks later – was not supported. Also, providing it was contrary to the "Medicine Ground Rules" of the *TWCC Medical Fee Guidelines*,¹ Section I (B)(2)(a), page 33.

Insofar as the therapeutic exercises (97110) were concerned in this case, there was no evidence to support the need for continued monitored therapy. Services that do not require "hands-on care" or supervision of a health care provider are not considered medically necessary services *even if* they were performed by a health care provider. Continuation of an unchanging treatment plan, performance of activities that can be performed as a home exercise program, and/or modalities that provide the same effects

¹ *Medical Fee Guideline*, effective 04/01/96, Copyright 1996, Texas Workers' Compensation Commission

as those that could be self applied, are not indicated. Any gains that were obtained in this time period would have likely been achieved through performance of a home program.

Current medical literature states, "...there is no strong evidence for the effectiveness of supervised training as compared to home exercises."² Therapeutic exercises may be performed in a clinic one-on-one, in a clinic in a group, at a gym or at home with the least costly of these options being a home program. A home exercise program is also preferable because the patient can perform them on a daily basis. Put another way, the provider in this case failed to establish why the services still needed to be performed one-on-one, supervised basis past 09/17/03, or at any time in excess of three (3) units.

In terms of the neuromuscular reeducation service (97112), the medical records submitted did not reflect any neuromuscular abnormalities in either the diagnosis or in the clinical examination findings that would otherwise warrant the medical necessity of performing this service on this patient (for example, proprioceptive abnormalities, gait disturbances, atrophy). In fact, on various examinations, with more than one doctor, the neurological component was noted as intact and within normal limits. Therefore, the medical necessity of performing the service was not supported. In addition, neither myofascial trigger points nor specific myofascial pain referrals patterns were mentioned in the physical examination findings or diagnoses, so the performance of myofascial release (in the form of manual therapy, 97140) was unsupported as medically necessary, as well. Moreover, mobilization (also reported as 97140) has been shown to be ineffective for patients with low back pain,³ so it would not have been appropriate to report this service as "mobilization," either.

Several randomized studies^{4 5 6} have proven the effectiveness of spinal manipulation for patients with cervical spine symptoms and conditions, and the medical records submitted fail to document that chiropractic spinal adjustments were performed at any time. Furthermore, according to the AHCP⁷ guidelines, spinal manipulation was the only recommended treatment that could relieve symptoms, increase function and hasten

² Ostelo RW, de Vet HC, Waddell G, Kerchhoffs MR, Leffers P, van Tulder M, Rehabilitation following first-time lumbar disc surgery: a systematic review within the framework of the cochrane collaboration. *Spine*. 2003 Feb 1;28(3):209-18.

³ Frost H, Lamb SE, Doll HA, Carver PT, Stewart-Brown S. Randomised controlled trial of physiotherapy compared with advice for low back pain. *BMJ*. 2004 Sep 25;329(7468):708. Epub 2004 Sep 17.

⁴ Hurwitz EL, Morgenstern H, Harber P, Kominski GF, Yu F, Adams AH. A randomized trial of chiropractic manipulation and mobilization for patients with neck pain: clinical outcomes from the UCLA neck-pain study. *Am J Public Health*. 2002 Oct;92(10):1634-41.

⁵ Hoving JL, Koes BW, de Vet HC, van der Windt DA, Assendelft WJ, van Mameren H, Deville WL, Pool JJ, Scholten RJ, Bouter LM. Manual therapy, physical therapy, or continued care by a general practitioner for patients with neck pain. A randomized, controlled trial. *Ann Intern Med*. 2002 May 21;136(10):713-22.

⁶ Gross AR, Hoving JL, Haines TA, Goldsmith CH, Kay T, Aker P, Bronfort G, Cervical overview group. Manipulation and Mobilisation for Mechanical Neck Disorders. *Cochrane Database Syst Rev*. 2004;1:CD004249.

⁷ Bigos S., Bowyer O., Braen G., et al. Acute Low Back Problems in Adults. Clinical Practice Guideline No. 14. AHCP⁷ Publication No. 95-0642. Rockville, MD: Agency for Health Care Policy and Research, Public Health Service, U.S. Department of Health and Human Services. December, 1994.

recovery for adults suffering from acute low back pain. Based on those research findings, it is difficult to understand why a doctor of chiropractic would withhold this recommended treatment while performing a host of other non-substantiated therapies.

Sincerely,

Gilbert Prud'homme
Secretary & General Counsel

GP:thh